



State of Wisconsin \ PUBLIC SERVICE COMMISSION

August 30, 1978

FILED/ACCEPTED

APR 26 2010

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Federal Communications Commission
Office of the Secretary

COMMON CARRIER BUREAU

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FILE NO. 3-7-1.2

Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554


SEP 1 1978

TARIFFS AND SERVICES
DIVISION

Gentlemen:

With respect to public law 95-234 signed into law on February 21, 1978 amending the Federal Communications Act of 1934, this commission certifies that it regulates the rates, terms and conditions for pole attachments to public utilities and in so doing, it has the authority to consider and does consider the interest of both subscribers of the cable televisions service and consumers of public utility services.

By the Commission,



Lewis T. Mittness
Executive Secretary

LTM:FCH:djw

RECEIVED

SEP 1 1978

121

LRB or Bill No.

AB1215

Amendment No. if Applicable

If there is a state or local fiscal effect, attach worksheet.

Subject

Regulation of Cable TV Pole Attachment Contracts

Fiscal Effect

State: ☐ Increase/Decrease Existing Appropriation
☐ Create New Appropriation
☒ Increase/Decrease Existing Revenues☒ Increase Costs — May Be Possible to Absorb Within AgencyBudget ☐ Yes ☒ No☐ Decrease Costs☐ No State Fiscal EffectLocal: ☐ Increase/Decrease Costs or Revenues
☐ Permissive ☐ Mandatory☒ No Local Fiscal Effect

Fund Sources Affected

☐ GPR ☐ FED ☒ PRO ☐ PRS ☐ SEG

Affected Ch. 20 Appropriations

20.155 (1) (g)

Assumptions Used in Arriving at Fiscal Estimate

This proposal would require the Public Service Commission to regulate the terms and conditions of, establish maximum rates for, and evaluate whether or not rates are excessive for pole attachment contracts between cable television operations, on one hand and public utilities or cooperatives on the other hand. Under provisions of the State Electrical Code, the Commission has informally heard several cases involving unresolved pole attachment contract disputes between cable television companies and public utilities. But the Commission has no authority to regulate terms and conditions of these contracts nor to establish maximum rates. The latter requirement would require a prior study of current pole attachment contract rates. With over 100 cable television operations in Wisconsin, this study might require 1.0 project position and cost approximately \$22,000 PRO.

In addition, the requirement to determine whether specific contract rates exceed the maximum established rates would require a total staff-effort of between 60 and 90 hours per case depending on the level and nature of the rate adopted by the Commission. With approximately 20 cases per year, costs are itemized as follows:

	Low Workload Estimate (60 hrs./case)				High Workload Estimate (90 hrs./case)		
Position	Hourly Wage	Hours/ Case	Salary/ Case	Caseload Cost	Hours/ Case	Salary/ Case	Caseload Cost
Attorney 14	\$ 9.016	8	\$ 72.13	\$1,443	12	\$108.19	\$ 2,164
Attorney 12 (Hrg. Examiner)	10.788	6	64.67	1,293	9	97.00	1,941
Steno. Reporter 1	5.346	10	53.46	1,069	15	80.19	1,604
Typist 2	3.466	16	55.46	1,109	24	83.18	1,661
Pub. Serv. Engineer 2	7.217	20	144.34	2,887	30	216.51	4,330
TOTAL		60	\$390.06	\$7,801	90	\$585.07	\$11,701

Long-Range Fiscal Implications

This proposal is estimated to cost approximately \$37,100 PRO and require 1.00 PRO position during the 1979-81 biennium.

Agency

Public Service Commission

Authorized Representative

Date

Feb. 20 ,

ESTIMATE WORKSHEET
 and Estimate of Annual Fiscal Effect
 (BA-22 (Revised 6/77))

☒ ORIGINAL
☐ CORRECTED

☐ UPDATED
☐ SUPPLEMENTAL

LRB or Bill No.
 AB1215

Amendment No. if Applicable

Subject

Regulation of Cable TV Pole Attachment Contracts

One-time Costs or Revenue Fluctuations (do not include in annualized fiscal effect)

1. Maximum Rate Project \$22,000 PRO
 2. Permanent property for 1.00 FTE 800 PRO
 position \$22,800 PRO

Annualized fiscal impact on State funds fr

State Costs by Category	Increased Costs	Decreased Costs
FTE Position Changes	+ (1.00)	- ()
Salaries and Fringes	\$ - 14,276	\$ +
Staff Support Costs	- 2,340	+
Other State Costs	-	+
Local Assistance	-	+
Aids to Individuals or Organizations	-	+
TOTAL State Costs by Category	\$ - 16,616	\$ +
State Costs by Funds	Increased Costs	Decreased Costs
GPR	\$ -	\$ +
FED	-	+
PRO/PRS	- 16,616	+
SEG-O/SEG-S	-	+
TOTAL State Costs by Fund	\$ - 16,616	\$ +
State Revenue - Complete this only when proposal will increase or decrease state revenues, such as taxes, license fees, etc.	Decreased Rev.	Increased Rev.
GPR Taxes	\$ -	\$ +
GPR Earned	-	+
FED	-	+
PRO/PRS	-	+ 16,616
SEG-O/SEG-S	-	+
TOTAL State Revenues	\$ -	\$ + 16,616

Net Annualized Fiscal Impact on State & Local Funds

State	Annual Increases	Annual Decreases	Local	Annual Increases	Annual Decreases
Total Costs	\$ - 16,616	\$ +	Total Costs	\$ -	\$ +
Total Revenues	+ 16,616	-	Total Revenues	+	-
NET Impact on State Funds	\$ (+) or (-)	- 0 -	NET Impact on Local Funds	\$ (+) or (-)	

AL ESTIMATE
MHA 23 (1/77)

☒ ORIGINAL ☐ UPDATED
☐ CORRECTED ☐ SUPPLEMENTAL

LRB or Bill No. AB1215
Amendment No. if Applicable

If there is a state or local fiscal effect, attach worksheet.

Subject: Regulation of Cable TV Pole Attachment Contracts

Fiscal Effect		<input type="checkbox"/> Increase Costs - May Be Possible to Absorb Within Agency Budget <input type="checkbox"/> Yes <input type="checkbox"/> No
State:	<input type="checkbox"/> Increase/Decrease Existing Appropriation <input type="checkbox"/> Create New Appropriation <input type="checkbox"/> Increase/Decrease Existing Revenues	<input type="checkbox"/> Decrease Costs <input type="checkbox"/> No State Fiscal Effect
Local:	<input type="checkbox"/> Increase/Decrease Costs or Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<input type="checkbox"/> No Local Fiscal Effect
Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG		Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

When fringes are added at 22% of salaries, supplies and services are added at 20% of salaries, and permanent property for 1.0 additional FTE position is added at \$800, the total cost for this requirement is between \$11,900 PRO and \$17,400 PRO in 1978-79.

In conclusion, this proposal might cost between \$33,900 PRO and \$39,400 and require 1.0 FTE and 1.0 project position in 1978-79. A similar amount of funds would be collected from utilities as PRO-revenues.

Long Range Fiscal Implications

Agency	Authorized Representative	Date
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CHAPTER 196

REGULATION OF PUBLIC UTILITIES

- 196.01 Definitions.
- 196.02 Commission's powers.
- 196.03 Utility charges and service; reasonable and adequate.
- 196.04 Facilities granted other utilities; physical telephone connections; petition; investigation.
- 196.05 Utility property; valuation; revaluation.
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- 196.29 Procedure after summary investigation.
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- 196.40 Orders and determinations; time of taking effect.
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- 196.55 Franchises, made indeterminate.
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- 196.57 Grants after July 11, 1907; consent to municipal purchase.
- 196.58 Municipality to regulate utilities; appeal.
- 196.59 Merchandising by utilities.
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- 196.62 Discrimination, definition, penalty.
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196.01 Definitions. As used in chs. 196 and 197, unless the context requires otherwise:

(1) "Public utility" means and embraces every corporation, company, individual, association, their lessees, trustees or receivers appointed by any court, and every sanitary district, town, village or city that may own, operate, manage or control any toll bridge or any plant or equipment or any part of a plant or equipment, within the

state, for the conveyance of telephone messages or for the production, transmission, delivery or furnishing of heat, light, water or power either directly or indirectly to or for the public. No co-operative association organized under ch. 185 for the purpose of producing or furnishing heat, light, power or water to its members only shall be deemed a public utility under this definition. The term "public utility" as herein defined includes

any person engaged in the transmission or delivery of natural gas for compensation within this state by means of pipes or mains. Any privately owned public utility which furnishes sewer services or sewer facilities may elect to have the public service commission establish suitable and proper rates for its services.

(2) "Municipal council" means and embraces the common council or the sanitary commission or the town or village board of any town, village or city wherein the property of the public utility or any part thereof is located.

(3) "Municipality" means any town, village or city wherein property of a public utility or any part thereof is located.

(4) "Service" is used in its broadest and most inclusive sense.

(5) "Indeterminate permit" means and embraces every grant, directly or indirectly, from the state to any public utility, of power, right or privilege to own, operate, manage or control any plant or equipment or any part of a plant or equipment within this state for the production, transmission, delivery or furnishing of any public utility service, and such permit shall continue in force until the municipality shall exercise its option to purchase, or until it shall be otherwise terminated according to law.

(6) "Railroad" has the meaning attributed to it by section 195.02.

(7) The words "conveyance of telephone messages" shall, in situations where the person engaged in such activity is otherwise a telephone public utility as defined in sub. (1), also include in addition to voice communication the transmission of information, data or material other than by voice communication.

196.02 Commission's powers. (1) The commission is vested with power and jurisdiction to supervise and regulate every public utility in this state, and to do all things necessary and convenient in the exercise of such power and jurisdiction.

(2) The commission shall provide for a comprehensive classification of service for each public utility, and such classification may take into account the quantity used, the time when used, the purpose for which used, and any other reasonable consideration. Each public utility is required to conform its schedules of rates, tolls and charges to such classification.

(3) The commission shall have power to adopt reasonable rules and regulations relative to all inspections, tests, audits and investigations.

(4) (a) The commission shall have authority to inquire into the management of the business of all public utilities, and shall keep itself informed as to the manner and method in which the same is conducted, and may obtain from any public

utility all necessary information to enable the commission to perform its duties.

(b) Each public utility shall furnish to the commission in such form and at such times as the commission shall require, the following information respecting the identity of the holders of its voting capital stock, in order to enable the commission to determine whether such holders constitute an affiliated interest within the meaning of this chapter: The names of each holder of one per centum or more of the voting capital stock of such public utility; the nature of the property right or other legal or equitable interest which the holder has in such stock; and any other similarly relevant information which the commission shall prescribe and direct.

(c) In the event any public utility shall fail to furnish the commission with information required of it by the commission, the commission may issue an order directing the delinquent public utility to furnish such information forthwith, or to show good cause why such information cannot be obtained. Failure of any public utility to comply with such order of the commission shall be deemed a violation of this chapter, within the meaning of section 196.66.

(5) The commission or any commissioner or any person employed by the commission for that purpose shall, upon demand, have the right to inspect the books, accounts, papers, records and memoranda of any public utility, and to examine, under oath, any officer, agent or employe of such public utility in relation to its business and affairs. Any person other than one of said commissioners, who shall make such demand, shall produce his authority to make such inspection.

(6) The commission may require, by order or subpoena, served on any public utility as a summons is served in circuit court, the production within this state at such time and place as it may designate, of any books, accounts, papers or records kept by said public utility without the state, or verified copies in lieu thereof, if the commission shall so order. Any public utility failing or refusing to comply with any such order or subpoena shall, for each day it shall so fail or refuse, forfeit not less than fifty dollars nor more than five hundred dollars.

196.03 Utility charges and service; reasonable and adequate. (1) Every public utility is required to furnish reasonably adequate service and facilities. The charge made by any public utility for any heat, light, water or power produced, transmitted, delivered or furnished or for any telephone message conveyed or for any service rendered or to be rendered in connection therewith shall be reasonable and just, and every

unjust or unreasonable charge for such service is prohibited and declared unlawful.

(2) For rate-making purposes the commission may consider two or more municipalities as a regional unit where the same public utility serves said municipalities, if in its opinion the public interest so requires.

(3) In the case of a public water utility, the commission shall include, in the determination of water rates, the cost of fluorinating the water in the area served by such public water utility, provided the local governing legislative body in which such public water utility is situated authorizes the fluorination of water in the area primarily served by such public water utility.

196.04 Facilities granted other utilities; physical telephone connections; petition; investigation.

(1) Every public utility and every person having conduits, subways, poles, towers, transmission wires or other equipment on, over or under any street or highway, shall for a reasonable compensation, permit the use of the same by any public utility, whenever public convenience and necessity require such use, and such use will not result in irreparable injury to the owner or other users of such equipment, nor in any substantial detriment to the service to be rendered by such owners or other users; and every utility for the conveyance of telephone messages shall permit physical connections to be made, and telephone service to be furnished, between any telephone system operated by it, and the telephone toll line operated by another such public utility, or between its toll line and the telephone system of another such public utility, or between its toll line and the toll line of another such public utility, or between its telephone system and the telephone system of another such public utility, whenever public convenience and necessity require such physical connections, and such physical connections will not result in irreparable injury to the owners or other users of the facilities of such public utilities, nor in any substantial detriment to the service to be rendered by such public utilities. The term "physical connection," as used in this section, shall mean such number of trunk lines or complete wire circuits and connections as may be required to furnish reasonably adequate telephone service between such public utilities.

(2) In case of failure to agree upon such use or the conditions or compensation for such use, or in case of failure to agree upon such physical connections, or the terms and conditions upon which the same shall be made, any public utility or any other person interested may apply to the commission, and if after investigation the commission shall ascertain that public convenience and necessity require such use or such

physical connections, and that such use or such physical connections would not result in irreparable injury to the owner or other users of such equipment or of the facilities of such public utilities, nor in any substantial detriment to the service to be rendered by such owner or such public utilities or other users of such equipment or facilities, it shall by order direct that such use be permitted and prescribe reasonable conditions and compensation for such joint use, and that such physical connections be made, and determine how and within what time such connections shall be made, and by whom the expense of making and maintaining such connections shall be paid.

(3) Such use so ordered shall be permitted and such physical connections so ordered shall be made, and such conditions and compensation so prescribed shall be the lawful conditions and compensation for such use, and the lawful terms and conditions upon which such physical connections shall be made, observed, followed and paid. Any such order may be, from time to time, revised by the commission.

(4) Provided the parties cannot agree and the commission finds that public convenience and necessity or the rendition of reasonably adequate service to the public requires that a public utility should be permitted to extend its lines on, over or under the right of way of any railroad, or requires that the tracks of any railroad should be extended on, over or under the right of way of any public utility, the commission is empowered to order such extension by said public utility or railroad on, over or under the right of way of the other when it will not materially impair the ability of the railroad or utility, on, over or under whose right of way such extension would be made, to serve the public. Such use so ordered shall be permitted upon such conditions and such compensation as the commission shall deem equitable and reasonable in the light of all the circumstances, which conditions and compensation so prescribed shall be the lawful conditions and compensation for such use and the lawful terms and conditions upon which such use shall be made, observed, followed and paid.

196.05 Utility property; valuation; revaluation.

(1) Whenever the commission shall deem it either proper or necessary in the interest of effective regulation, the commission shall value or revalue all the property of every public utility actually used and useful for the convenience of the public.

196.06 Uniform accounting; forms; books; office.

(1) Every public utility shall keep and render to the commission in the manner

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its own motion summarily investigate the same with or without notice.

196.29 Procedure after summary investigation. (1) If, after making such summary investigation, the commission becomes satisfied that sufficient grounds exist to warrant a formal hearing being ordered as to the matters investigated, it shall set a time and place for a hearing.

(2) Notice of the time and place for such hearing shall be given to the public utility or railroad, and to such other interested persons as the commission shall deem necessary, as provided in section 196.26, and thereafter proceedings shall be had and conducted in reference to the matter investigated in like manner as though complaint had been filed with the commission relative to the matter investigated, and the same order or orders may be made in reference thereto as if such investigation had been made on complaint.

196.30 Utilities may complain. Any public utility may make complaint as to any matter affecting its own product or service.

196.32 Witness fees and mileage. (1) Each witness who shall appear before the commission or its agent by its order, shall receive for his attendance the fees and mileage now provided for witnesses in civil cases in courts of record, which shall be audited and paid by the state in the same manner as other expenses are audited and paid, upon the presentation of proper vouchers sworn to by such witnesses and approved by the chairman of the commission. Said fees and mileage shall be charged to the appropriation for the public service commission.

(2) No witness subpoenaed at the instance of parties other than the commission shall be entitled to compensation from the state for attendance or travel unless the commission shall certify that his testimony was material to the matter investigated.

196.33 Depositions. The commission or any party may in any investigation or hearing cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in circuit courts. Any expense incurred or authorized by the commission in taking such depositions shall be charged to the appropriation for the commission.

196.34 Stenographic records. A full and complete record shall be kept of all proceedings had before the commission or its agent on any formal investigation or hearing had and all

testimony shall be taken down by the stenographer appointed by the commission.

196.36 Transcripts as evidence; free to parties. (1) A transcribed copy of the evidence and proceedings or any specific part thereof, on any investigation or hearing taken by the stenographer appointed by the commission, being certified by such stenographer to be a true and correct transcript of all the testimony or of a particular witness, or of other specific part thereof, carefully compared by him with his original notes, and to be a correct statement of the evidence and proceedings had on such investigation or hearing so purporting to be taken and transcribed, shall be received in evidence with the same effect as if such reporter were present and testified to the fact so certified.

(2) A copy of such transcript shall be furnished on demand free of cost to any party to such investigation or hearing.

196.37 Lawful rates; reasonable service.

(1) Whenever upon an investigation made under the provisions of chapters 196 and 197 the commission shall find rates, tolls, charges, schedules or joint rates to be unjust, unreasonable, insufficient or unjustly discriminatory or preferential or otherwise unreasonable or unlawful, the commission shall determine and by order fix reasonable rates, tolls, charges, schedules or joint rates to be imposed, observed and followed in the future in lieu of those found to be unreasonable or unlawful.

(2) Whenever the commission shall find any regulations, measurements, practices, acts or service to be unjust, unreasonable, insufficient, preferential, unjustly discriminatory or otherwise unreasonable or unlawful, or shall find that any service is inadequate, or that any service which can be reasonably demanded cannot be obtained, the commission shall determine and by order fix reasonable measurements, regulations, acts, practices or service to be furnished, imposed, observed and followed in the future in lieu of those found to be unreasonable, inadequate or otherwise unlawful, and shall make such other order respecting such measurement, regulation, act, practice or service as shall be just and reasonable.

196.375 Adequate service; reasonable rates. Upon complaint by any party affected, setting forth that any grantee of a permit to develop hydraulic power and generate hydroelectric energy for sale or service to the public is not furnishing citizens of this state with adequate service at a reasonable rate in consequence of sales of such energy outside of the state, the commission shall have power to

declare any or a grantee for such they interfere a declaration shall and investigative convenience and specified part or

196.38 Utilities. public utilities may make such change may be necessary said order, and made by any put charges, or joint the commission.

196.39 Change of order. commission may or upon motion of notice to the public to be heard, rescinding rates, tolls, other order made reopen any case order therein, for or for any other r altering, amending, shall have the same

The PSC cannot order notice and hearing on clarification of an earlier Public Serv. Comm. 56A

196.395 Test, and supplemental orders in orders. orders calling for a the requirements during which test retain jurisdiction commission is emergency, emergency. Where an order is conditions any party order shall be deemed waived all objection in such order.

196.40 Orders as of taking effect. If commission constitution shall be in force the same has been for personal delivery or for all parties to the decision was made by the commission shall upon which the same such order from and

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11 January 1979

COMMON CARRIER BUREAU

Mr. Arthur David
Chief, Pole Attachment Branch
Common Carrier Bureau
Federal Communication Commission
1919 Main Street NW
Washington, D.C. 20554

JAN 14 1979
TARIFFS AND SERVICES
DIVISION

Dear Mr. David:

This firm is counsel to the Wisconsin Cable Communications Association, the trade association of cable television operators in Wisconsin. It has come to our attention that the Wisconsin Public Service Commission (PSC), in a letter dated August 30, 1978 (copy attached), has certified to you that the PSC:

"Regulates the rates, terms and conditions for pole attachments to public utilities and in so doing, it has the authority to consider and does consider the interests of both subscribers of the cable televisions service and consumers of public utility services."

The ostensible purpose of this certification is to invoke the provision of Public Law 95-233 (amending the Federal Communications Act of 1934) which reserves to those states that regulate rates, terms and conditions for pole attachments, the exclusive authority for such regulation. See P.L. 95-233, §224(c)(1).

This certification by the PSC is erroneous. The PSC does not regulate, nor does it have authority to under Wisconsin law to regulate, cable television pole attachments or consider the interest of subscribers of cable television services.

Our statement is founded on three separate grounds.

1. Wisconsin law does not authorize PSC regulation of pole attachments of cable television operations.

Attached is a memorandum by F.C. Huebner of the PSC staff to the Commission which purports to demonstrate the statutory basis for PSC regulation of cable television pole attachments.

Mr. Arthur David
11 January 1979
Page Two

The memorandum cites, as authority, Sections 196.37 and 196.04, Wis. Stat. (Copies of Statutes attached).

Section 196.37 deals with the regulation of "rates, tolls, charges, schedules or joint rates" which are found to be "unjust, unreasonable, insufficient or unjustly discriminatory or preferential or otherwise unreasonable and unlawful". The regulatory scope of this section, as of all PSC authority under Chapter 196, is confined to the regulation of public utilities. The basis statement of authority is found in Section 196.02(1), Wis. Stats., which provides:

(1) The Commission is vested with power and jurisdiction to supervise and regulate every public utility in this state, and to do all things necessary and convenient in the exercise of such power and jurisdiction. (emphasis added)

The term "public utility" is defined by statute as follows:

"Public utility" means and embraces every corporation, company, individual, association, their leasees, trustees or receivers appointed by any court, and every sanitary district, town, village or city that may own, operate, manage or control any toll bridge or any plant or equipment or any part of a plant or equipment, within the state, for the conveyance of telephone messages or for the production, transmission, delivery or furnishing of heat, light, water or power either directly or indirectly to or for the public. No cooperative association organized under ch. 185 for the purpose of producing or furnishing heat, light, power or water to its members only shall be deemed a public utility under this definition. The term "public utility" as herein defined includes any person engaged in the transmission or delivery of natural gas for compensation within the state by means of pipes or mains. Any privately owned public utility which furnishes sewer services or sewer facilities may elect to have the public service commission establish suitable and proper rates for its services. Wis. Stats. §196.01(1)

A cable television operation is not embraced by the statutory definition of public utility. In fact, the Huebner memorandum does not assert, nor could it credibly do so, that a cable television operation is a public utility in Wisconsin.

Neither does Section 196.04, Wis. Stats., vest authority in the PSC to regulate cable television pole attachments.

Mr. Arthur David
11 January 1979
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A careful reading of the statute (see attached) reveals that the scope of PSC regulation under the statute extends only to the use of "conduits, subways, poles, towers, transmission wires or other equipment . . . by any public utility". (emphasis added) The statute states clearly that only pole attachments by public utilities are within the PSC scope of authority (and thereby such attachments by anyone else are not). This conforms to the limited scope of PSC authority as set forth in Sections 196.02(1) and 196.01(1) Wis. Stats. discussed above.

2. The Wisconsin Legislature has considered and consistently refused to enact legislation to grant the PSC authority to regulate the cable television industry or cable pole connections specifically.

In the 1973 session of the legislature, two proposals which provided for PSC regulations of the cable television industry and which granted the PSC specific authority to regulate CATV pole attachments and set reasonable rates of compensation for such use were considered, and both failed to be enacted. (1973 Assembly Bill 364 and 1973 Assembly Bill 635).

Similar bills were considered and rejected in both a Special Session of the Legislature in 1974 (1974 Special Session Senate Bill 6) and in the 1975 Legislative Session (1975 Assembly Bill 1191). Of all these proposals only 1973 Assembly Bill 635 managed to even emerge from its house of origin.

In the 1977 legislative session, 1977 Assembly Bill 1215 was considered, which specifically would have required the PSC to regulate contracts by cable television companies with public utilities relating to pole attachments. That proposal also failed to receive favorable action and died in the house of origin.

3. The PSC has officially acknowledged that it lacks authority to regulate contracts for cable television pole attachments.

The terse August 30, 1978 letter of certification to the FCC that the PSC regulates pole attachments is remarkable in that it directly contradicts the official position taken by the Commission to the Legislature on February 29, 1978.

In the attached fiscal estimate (which is required under Wisconsin law of state agencies prior to legislative consideration of any bill or resolution which has a "fiscal effect"), Mr. Roy Johnston, on behalf of the Commission states that:

The Commission has no authority to regulate terms and conditions of these contracts (between cable television operations and public utilities for pole attachments) nor to establish maximum rates (Fiscal Estimate to AB. 1215 at p. 2)

Mr. Arthur David
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It is submitted that Mr. Johnston's position is the correct legal position. Nothing transpired during the next six months to expand the authority of the PSC to the extent presumed by the Commission in its August 30, 1978, letter to your agency.

In conclusion, it is our position that the PSC does not have the authority under Wisconsin law it certified to the FCC on August 30, 1978. Such authority can only be granted to the Commission by the Wisconsin Legislature. This expansion of PSC authority has been rejected by the Legislature on at least five occasions since 1973.

Therefore, jurisdiction in the State of Wisconsin for the regulation of rates, terms and conditions for pole attachments under the Communications Act of 1934 (as amended by the Communications Act Amendments of 1978) rests with the Federal Communications Commission and not the PSC.

The text of the Communications Act Amendments of 1978 is not clear as to how the FCC may acknowledge its lawful authority in the face of a faulty assertion of authority by a State under Section 234(c). It does, however, seem appropriate for the FCC to take some action to determine whether the FCC or the Wisconsin PSC has lawful authority for the regulation of pole attachments of cable television operations in Wisconsin.

Would you please advise us whether your agency, upon reviewing the applicable Wisconsin law, will act to achieve such a determination.

By a copy of this letter to the Chairman of the PSC we are extending to him and his agency the courtesy of an opportunity to review our position and reply as they deem appropriate. We would hope that, after reviewing our position, they would agree with our conclusion and so indicate to the FCC.

Sincerely,

MURPHY, STOLPER, BREWSTER
& DESMOND, S.C.

By:

Michael R. Vaughan

By:

Ralph M. Cagle

RMC:jab

cc: Dr. Charles Cicchetti
Chairman, Wisconsin Public Service Commission

Lewis T. Mittness
Executive Secretary
Wisconsin Public Service Commission

PUBLIC SERVICE COMMISSION OF WISCONSIN

DEPARTMENTAL CORRESPONDENCE

FILE NO.

(For Commission Action)

TO: The Commission

FROM: F. C. Huebner

SUBJECT: Pole attachments by cable television operations.

Suggested minute:

The Commission upon due consideration approved a letter to the Federal Communications Commission certifying that the Public Service Commission of Wisconsin regulates the rates, terms, and conditions of pole contacts to public utilities by cable television operations and in so doing have the authority to consider and does consider the interest of subscribers of cable television service and the consumers of the utility services.

Public law 95-234 amends the Federal Communications Act of 1934 providing under Section 224 (b) (1) that "Subject to the provisions of subsection (c) of this section, the Commission shall regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable, and shall adopt procedures necessary and appropriate to hear and resolve complaints concerning such rates, terms, and conditions."

The law also provides under Section 224 (c) that "(1) Nothing in this section shall be construed to apply to, or to give the Commission jurisdiction with respect to rates, terms, and conditions for pole attachments in any case where such matters are regulated by a State. (2) Each State which regulates the rates, terms, and conditions for pole attachments shall certify to the Commission that -- (A) It regulates such rates, terms, and conditions; and (B) In so regulating such rates, terms, and conditions, the State has the authority to consider and does consider the interest of the subscribers of cable television services, as well as the interests of the consumers of the utility services."

Under public law 95-234 pole attachments is defined as any attachment by a cable television system to a pole, duct, conduit, or right-of-way owned or controlled by a utility.

Section 196.37 provides that the Commission has the authority to fix reasonable rates, tolls, charges, schedules or joint rates to be imposed, observed and followed. It is considered that the charges by a public utility for attachment of cable or other property to its facilities by a cable television company comes under the jurisdiction of the Public Service Commission just as such attachments by a public utility are regulated by Section 196.04 Wisconsin Statutes.

Accordingly, I recommend that the attached letter be transmitted to the Federal Communications Commission under provision of Section 224 (c) (2).

If such letter is approved by the Commission I propose to transmit a letter to Wisconsin public utilities requesting information as to present pole contacts, their charges therefore, and method of determining such charges; with such information utilized to possibly determine a fixed method of establishing a pole contact by non-utility enterprises with public utilities.



State of Wisconsin \ PUBLIC SERVICE COMMISSION

August 30, 1978

CHARLES J. CICHETTI, CHAIRMAN
JOHN C. OESTHEIMER, COMMISSIONER
EDWARD M. PARSONS, JR., COMMISSIONER
LEWIS T. MITTNESS, EXECUTIVE SECRETARY
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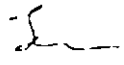
FILE NO. 3-7-1.2

Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Gentlemen:

With respect to public law 95-234 signed into law on February 21, 1978 amending the Federal Communications Act of 1934, this commission certifies that it regulates the rates, terms and conditions for pole attachments to public utilities and in so doing, it has the authority to consider and does consider the interest of both subscribers of the cable televisions service and consumers of public utility services.

By the Commission,


Lewis T. Mittness
Executive Secretary

LTH:FCH:djw